

Message Text

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EA/ANP - MR. MICHAUD (DRAFT)

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FM SECSTATE WASHDC

TO AMEMBASSY CANBERRA PRIORITY

INFO AMEMBASSY WELLINGTON

UNCLAS STATE 041205

E.O. 11652: GDS

TAGS: MARR, US, AS

SUBJECT: REPLY TO AUSTRALIAN QUESTIONS REGARDING NPW VISITS

REFERENCE: STATE A-292, JANUARY 16, 1975

1. FOLLOWING IS REPLY TO QUESTIONS POSED BY THE GOA CONCERNING NPW LIABILITY AND INDEMNITY. WE HAVE PROVIDED THE RESPONSE TO COUNSELOR OF AUSTRALIAN EMBASSY MCKEOWN IN WASHINGTON ON FEBRUARY 24.

VISITS OF UNITED STATES NUCLEAR POWERED WARSHIPS TO AUSTRALIA REPLY TO AUSTRALIAN QUESTION OF OCTOBER 9, 1974

BEGIN TEXT: THE QUESTIONS IN THE AUSTRALIAN PAPER CONCERN THE PROCEDURES AND PRINCIPLES THAT WOULD APPLY IN HANDLING CLAIMS IN THE UNLIKELY EVENT OF A NUCLEAR REACTOR
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INCIDENT DURING A VISIT OF A U.S. NUCLEAR POWERED WARSHIP

(NPW) TO AUSTRALIAN PORTS.

ON 6 DECEMBER 1974 PRESIDENT FORD SIGNED INTO LAW PUBLIC LAW 93-513, A JOINT RESOLUTION OF CONGRESS ASSURING COMPENSATION FOR DAMAGES CAUSED BY NUCLEAR INCIDENTS INVOLVING THE NUCLEAR REACTOR OF A U.S. WARSHIP. A COPY OF THIS LAW IS ATTACHED. THE OPERATIVE PART OF THE LAW STATES: "... IT IS THE POLICY OF THE UNITED STATES THAT

IT WILL PAY CLAIMS OR JUDGMENTS FOR BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF REAL OR PERSONAL PROPERTY PROVEN TO HAVE RESULTED FROM A NUCLEAR INCIDENT INVOLVING A NUCLEAR REACTOR OF A UNITED STATES WARSHIP: PROVIDED, THAT THE INJURY, DEATH, DAMAGE, OR LOSS WAS NOT CAUSED BY THE ACT OF AN ARMED FORCE ENGAGED IN COMBAT OR AS A RESULT OF CIVIL INSURRECTION. THE PRESIDENT MAY AUTHORIZE, UNDER SUCH TERMS AND CONDITIONS AS HE MAY DIRECT, THE PAYMENT OF SUCH CLAIMS OR JUDGMENTS FROM ANY CONTINGENCY FUNDS AVAILABLE TO THE GOVERNMENT OR MAY CERTIFY SUCH CLAIMS OR JUDGMENTS TO THE CONGRESS FOR APPROPRIATION OF THE NECESSARY FUNDS."

AS STATED IN THE REPORT (COPY ALSO ATTACHED) BY THE JOINT COMMITTEE ON ATOMIC ENERGY OF THE U.S. CONGRESS IN RECOMMENDING THE RESOLUTION TO THE CONGRESS: "THE INTENT OF THE RESOLUTION IS TO ENABLE THE U.S. TO GIVE A STRAIGHT-FORWARD, UNQUALIFIED ASSURANCE THAT ANY NUCLEAR DAMAGE CLAIMS INVOLVING THE REACTOR OF A NUCLEAR POWERED WARSHIP WOULD BE HANDLED ON AN ABSOLUTE LIABILITY BASIS REGARDLESS OF WHETHER OR NOT A FOREIGN GOVERNMENT HAS ENACTED LEGISLATION TO THAT EFFECT." THE RESOLUTION DOES NOT SET AN UPPER LIMIT ON THE AMOUNT OF U.S. LIABILITY. THE JOINT COMMITTEE REPORT CITES SEVERAL REASONS FOR THIS. FROM THE STANDPOINT OF THE HOST COUNTRIES' INTEREST, THE IMPORTANT REASON IS BECAUSE "... THE U.S. GOVERNMENT HAS STATED THAT IT WILL TAKE CARE OF WHATEVER DAMAGE ITS SHIPS CAUSE."

THE ENACTMENT OF THIS NEW LAW ENABLES THE UNITED STATES TO ASSURE OTHER GOVERNMENTS THAT IT WILL DEAL WITH ANY UNCLASSIFIED

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CLAIM ARISING OUT OF AN NPW REACTOR INCIDENT ON THE BASIS OF ABSOLUTE LIABILITY, I.E., LIABILITY WITHOUT PROOF OF FAULT.

IT WAS ASKED WHETHER, FOR THE PURPOSE OF PUBLIC CONSUMPTION THE U.S. WOULD BE WILLING TO DECLASSIFY A 20 MARCH 1972 LETTER RESPONDING TO PREVIOUS AUSTRALIAN QUESTIONS RAISED ON THIS SUBJECT. WE PREFER THAT THIS PARTICULAR CORRES-

PONDENCE REMAIN CLASSIFIED. HOWEVER, WE HAVE NO OBJECTION TO THE AUSTRALIAN GOVERNMENT CITING THE CLAIMS ASSURANCE CONTAINED IN PARAGRAPH THREE OF THE STATEMENT BY THE UNITED STATES GOVERNMENT ON OPERATION OF THE U.S. NUCLEAR POWERED WARSHIPS IN FOREIGN PORTS, OR P.L. 93-513 AND ITS ACCOMPANYING CONGRESSIONAL REPORT AS EVIDENCE THAT THE UNITED STATES IS PREPARED TO SETTLE MERITORIOUS CLAIMS FOR NUCLEAR REACTOR RELATED DAMAGE INVOLVING ITS NUCLEAR POWERED WARSHIPS PROMPTLY, FAIRLY AND EQUITABLY, ON THE BASIS OF ABSOLUTE LIABILITY.

A NUMBER OF QUESTIONS WERE ASKED REGARDING THE PRINCIPLES AND PROCEDURES THAT WOULD APPLY IN HANDLING CLAIMS FROM A NAVAL NUCLEAR REACTOR INCIDENT. SINCE AN NPW REACTOR INCIDENT HAS NEVER OCCURRED DURING 20 YEARS OF NPW OPERATION, THERE HAS BEEN NO REQUIREMENT TO DEVELOP SPECIFIC PROCEDURES FOR SETTLEMENT OF SUCH CLAIMS. THE HANDLING OF CLAIMS UNDER THE NEW LAW WOULD, HOWEVER, BE AN ADMINISTRATIVE FUNCTION. FURTHER, UNDER THE AUTHORITY ESTABLISHED IN PL 93-513, IT IS ENVISIONED THAT THE SECRETARY OF THE NAVY WOULD BE AUTHORIZED TO PAY CLAIMS OUT OF EXISTING CONTINGENCY FUNDS OR TO CERTIFY THE CLAIMS ON BEHALF OF THE PRESIDENT TO THE CONGRESS FOR APPROPRIATION OF SUCH ADDITIONAL FUNDS AS ARE NECESSARY.

A SIMPLE PROCEDURE IS ANTICIPATED WHEREBY THE CLAIMANT COULD SUBMIT A CLAIM DIRECTLY TO THE U.S. NAVY OR, IF THE CLAIMANT'S GOVERNMENT SO DESIRED, THE CLAIM COULD BE SUBMITTED TO THE UNITED STATES THROUGH DIPLOMATIC CHANNELS. WHENEVER EITHER ADMINISTRATIVE CLAIMS PROCEDURE WERE USED, NO QUESTION OF SOVEREIGN IMMUNITY WOULD ARISE.

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A CLAIMANT COULD CHOOSE TO IGNORE EITHER OF THOSE REMEDIES AND INSTEAD PURSUE JUDICIAL RELIEF IN THE COURTS OF HIS COUNTRY, THE UNITED STATES, OR SOME THIRD COUNTRY. IF SUIT WERE BROUGHT AGAINST THE UNITED STATES IN A FOREIGN COURT, ARISING OUT OF THE ACTIONS OF A U.S. WARSHIP, THE UNITED STATES WOULD RESERVE THE RIGHT TO ASSERT A DEFENSE OF SOVEREIGN IMMUNITY. IT IS ENVISIONED THAT COST SHARING PROVISIONS SUCH AS IN THE STATUS OF FORCES AGREEMENT WOULD BE USED FOR THE SETTLEMENT OF CLAIMS IN WHICH A COURT OR BOARD OF THE COUNTRY OF THE CLAIMANT'S NATIONALITY MAKES THE DETERMINATION AS TO THE AMOUNT OF DAMAGES IN THE CONTEXT OF A CLAIM BROUGHT BY AN INDIVIDUAL CLAIMANT AGAINST HIS GOVERNMENT.

IT HAS BEEN ASKED IF THE UNITED STATES GOVERNMENT IS PREPARED TO APPROACH CONGRESS FOR FUNDS WHICH MIGHT BE NEEDED TO SETTLE CLAIMS EXCEEDING THE \$1 MILLION SETTLEMENT LIMIT SET FORTH IN THE ADMIRALTY STATUTES. THE U.S. IS CERTAINLY PREPARED TO DO SO REGARDLESS OF WHICH CLAIMS PROCEDURE IS USED. IN THIS REGARD WE VIEW PL 93-513 AS A STRONG STATEMENT OF CONGRESSIONAL INTENT TO APPROPRIATE AS NECESSARY THE FUNDS NEEDED TO SETTLE (ON AN ABSOLUTE LIABILITY BASIS) MERITORIOUS CLAIMS RESULTING FROM A U.S. NPW REACTOR INCIDENT.

IT ALSO HAS BEEN ASKED WHETHER THE UNITED STATES GOVERNMENT WOULD BE PREPARED FOR NPW REACTOR INCIDENT CLAIMS, TO EXTEND THE TWO YEAR STATUTE OF LIMITATIONS SET FORTH IN THE ADMIRALTY STATUTES. STATUTES OF LIMITATIONS WOULD MERELY AFFECT THE AUTHORITY OF THE SECRETARY OF THE NAVY TO UTILIZE OTHERWISE AVAILABLE CONTINGENCY FUNDS AND WOULD PREVENT A U.S. COURT FROM CONSIDERING A CLAIM. REQUESTS STILL COULD AND WOULD BE SUBMITTED TO CONGRESS FOR APPROPRIATIONS TO SETTLE MERITORIOUS CLAIMS WITHOUT REGARD TO THE ADMIRALTY STATUTE OF LIMITATIONS, HOWEVER, FROM A PRACTICAL STANDPOINT IT IS ENVISIONED THAT SOME REASONABLE LONG TERM LIMITATION PERIOD WILL BE ESTABLISHED ADMINISTRATIVELY FOR SUBMISSION OF CLAIMS UNDER THE SETTLEMENT AUTHORITY CONTAINED IN PUBLIC LAW 93-513. END TEXT.

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3. EMBASSY GUIDANCE RE APPROACH TO GOA, AS INDICATED IN REFERENCE AIRGRAM, FOLLOWS BY SEPARATE TELEGRAM. KISSINGER

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Message Attributes

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Draft Date: 24 FEB 1975
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Disposition Approved on Date:
Disposition Authority: n/a
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Disposition Event:
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From: STATE
Handling Restrictions: n/a
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Legacy Key: link1975/newtext/t19750218/aaaaapqh.tel
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